

Kentucky Environmental Quality Commission Public Meeting
**Kentucky's Environmental Future:
Will We See Progress in the Years Ahead?**

Meeting Minutes

May 8, 2003

Capitol Annex, Room 129, Frankfort

EQC Commissioners Present

Aloma Dew, Chair

Betsy Bennett, Vice-Chair

Gordon Garner

Gary Revlett

Lindell Ormsbee

Patty Wallace

Speakers/Representatives Present

Hank List, Secretary, NREPC

Bob Logan, Environmental Protection

Lona Brewer, Division of Air Quality

Russ Barnett, University of Louisville

Carl Campbell, Dept. Surface Mining

Jim Villines, Dept. Surface Mining

Roy McQueary, Dept. Surface Mining

EQC Commissioners not attending

Jean Dorton

EQC Staff Present

Leslie Cole, Director

Lola Lyle, Research Analyst

Frances Kirchhoff, Administrative Assistant

AGENDA

1 p.m. - Ky. Environmental Strategic Plan: A Vision for the Future

- Russ Barnett, Director, Ky. Institute for the Environment and Sustainable Development, University of Louisville
- Robert Logan, Commissioner, Dept. of Environmental Protection
- Questions and comments

2 p.m. - Budget Cuts and Impacts on Environmental Programs

- Hank List, Secretary, Natural Resources and Environmental Protection Cabinet

2:30 p.m - Other Business

Proposed Regulation Review

-Air - 401 KAR 57-002, 60-005, 63-002, 52-080 to incorporate federal NESHAP and NSPS standards

-Waste - 401 KAR 42:005 to change the definition of a cathodic protection tester for the underground storage tank program.

-Noncoal - regulations governing noncoal mineral extraction and oil and gas drilling.

OPEN MEETING

EQC Chairperson Aloma Dew opened the meeting at 1 p.m. There were approximately 40 people in attendance. The purpose of the meeting was to review the Ky. Department for Environmental Protection's Strategic Plan for the Environment and the impacts that budget reductions would have on the Cabinet and its ability to carry out its mission to protect the environment.

Introduction of EQC Newly Appointed Commissioners

Ms. Dew introduced newly appointed EQC commissioners Gordon Garner and Dr. Lindell Ormsbee. Ms. Dew noted that the commission was pleased that Gordon has joined EQC again. Gordon previously served on EQC from 1989 through 1996. Gordon is a professional civil engineer who retired last year after serving 18 years as Director of the Louisville Jefferson County Metropolitan Sewer District. Since he retired, he has served as a consultant to China advising the country on wastewater issues. He also is a board member on the Ohio River Sanitation Commission.

Ms. Dew also welcomed Dr. Ormsbee to EQC. He is a native of Hopkinsville and is a Raymond-Blythe endowed professor of civil engineering at the University of Kentucky. Dr. Ormsbee currently serves as the associate director of the Kentucky Water Resources Research Institute. He has served as a visiting scholar with the Division of Water, assisting the state transition to a watershed management framework. In addition to being a licensed professional engineer, he is the only surface water hydrologist in Kentucky to be certified by the American Institute of Hydrology.

Aloma Dew thanked Mr. Garner and Mr. Ormsbee for serving on EQC. She noted that they both bring valuable expertise and experience to EQC and we appreciate their commitment to making Kentucky a better place.

Approval of Minutes

The first order of business was to approve the January 17 meeting minutes. A motion was made by Gary Revlett to approve the minutes of the January 17 meeting, seconded by Betsy Bennett and was unanimously approved.

KENTUCKY ENVIRONMENTAL STRATEGIC PLAN: A VISION FOR THE FUTURE

EQC asked Bob Logan, Commissioner of the Department of Environmental Protection and Russell Barnett, Director of the University of Louisville's Sustainable Development Center to discuss Kentucky's first Environmental Strategic Plan and its goal to link environmental programs with performance.

EQC Chairperson Dew noted that Kentucky's current approach to environmental protection has evolved over the past half-century. Environmental programs in Kentucky and various state agencies and divisions were created at different times and for different reasons—generally to address a specific environmental pollution issue or because of federal government mandates. It is clear that environmental laws and programs have had a significant impact on environmental quality in the state. The EQC State of Kentucky's Environment reports document real progress in terms of cleaner air, safer drinking water and improved water quality.

However, Kentucky, and the nation, has now entered a new era of environmental protection. The traditional "command and control" approaches of the past have reached a point of diminishing returns. While these programs have resulted in environmental improvements, several of the EQC indicators reveal that progress has essentially stalled in several areas.

It is clear that these programs are the backbone of Kentucky's environmental protection efforts and must be kept effective, according to Dew. However, new strategies must also be devised to augment traditional regulatory programs if Kentucky is to continue to see progress in restoring environmental quality.

Kentucky also now faces the daunting challenge of protecting the environment while facing serious budget shortfalls. Environmental programs have experienced cutbacks in recent years, and further reductions are likely. Ms. Dew stated that it is in this setting that Kentucky must make some tough decisions about its environmental future.

• Russ Barnett, Director, Ky. Institute for the Environment and Sustainable Development, University of Louisville

Mr. Barnett noted that EQC had asked him to address four questions about the DEP 2002-2003 Environmental Management Plan prepared by the Department for Environmental Protection.

(1) "Is the preparation of a plan important?"

Mr. Barnett noted that in 1862 during a leisurely 2½-rowboat trip in England, the Rev. Charles Dodgson spun a story on the spur of the moment. At the request of the 3 children who heard the tale, he put the story to print. To protect his reputation at Oxford where he taught, he used the pen name Lewis Carroll, and in the story of Alice in Wonderland we find the answer to this threshold question:

One day Alice came to a fork in the road and saw a Cheshire cat in a tree. "Which road do I take?" she asked. "Where do you want to go?" was his response. "I don't know," Alice answered. "Then," said the cat, "it doesn't matter."

Mr. Barnett noted that over the years the Department has initiated and supported a number of programs of questionable value. He said if we do not have a firm idea of where we are going then the use of limited resources for these programs makes little difference. And whether we achieve any benefit to Kentucky's environment may never be questioned or make much difference within the context of the agency. For example, Kentucky was proud to be one of the first states with an air toxic program in the 1980's, until we examined it's benefit in 1990 and realized that it had not resulted in any reduction in the generation or release of air toxics. He also noted that DEP at one time regulated the addition of fluoride into drinking water, but when the program was transferred to the Health Department and morphed into a technical assistance program there was no change in Kentucky's drinking water. Mr. Barnett said we have required companies to submit detailed information on the hazardous waste they generate and how it was managed, but no one has really reviewed the information or tried to really track waste "cradle to grave."

With reduced resources, it becomes essential that we ask what path we want to go down, and how can we measure our progress, according to Barnett. The Department is to be applauded for attempting to identify the road it wants to travel.

(2) "How can this plan succeed where others have failed?"

Mr. Barnett stated that over the years the Cabinet has prepared hundreds of different plans. Some required by federal law, others by state law, and others under the initiative of programs or individuals within the Cabinet. Many have never had any impact on the agency or the environment. The reasons vary but include inadequate resources available to implement the plan, not enough public or political support, not enough internal support for the plan, or the plan was not understood by the public or the agency or it was too unrealistic.

Barnett indicated that the 2002-03 DEP Strategic Plan as prepared is not a plan on what needs to occur to protect Kentucky's environment. It is an internal plan meant to guide the agency. And this is one of its weaknesses. It does not set priorities. For example, cleaning up roadside litter is

afforded the same priority as assuring that air pollutants do not create a health risk in excess of 1 in a million cancer morbidity rate. It does not match end results with resources needed to accomplish the desired end results.

Mr. Barnett said the general public, the regulated community, members of the General Assembly, NGO's, other agencies and state universities have not participated in plan development. Dates to accomplish desired end results can only be reached if adequate resources are provided. And Mr. Barnett indicated we are off to a rocky start in the first year with budget cuts and yet the plan provides no hint as to how these cuts will impact desired outcomes or provide the road map to decision makers on where to take the cuts. Also it does not identify any strategies to get to any of the desired outcomes.

KRS 224.10-100 mandated the DEP in 1972 to create a comprehensive environmental management plan. This was first attempted in 1990 with a comprehensive plan that was adopted by Governor Wilkinson. This plan linked outcomes with needed resources and the Governor provided in excess of 250 people and \$18 million to implement the plan. This was followed in 1996 with a comparative risk management plan that was prepared with extensive input from the general public, industry, academia and the General Assembly to identify those issues posing the greatest public health and environmental risks. This plan provides a road map on how priorities would be selected. The success or failure of this plan depends on upper management's use of the plan to establish accountability, setting and tracking benchmarks, and evaluating performance of mid-level managers in the agency. If accountability measures are not established, the Strategic Plan will not have any meaningful impact.

Mr. Barnett mentioned that the 2002-2003 strategic management plan spells out desired environmental outcomes. The desired outcomes can be characterized as being:

- Meeting regulatory requirements.

Although a laudable goal, meeting regulatory goals may not always adequately protect the environment or public health. The Department's own experience in geographic initiatives has shown that facilities discharging pollutants may all be in compliance while the risk to public health may exceed the Department's goals, or the environment may be irreparably harmed.

Research has shown that the effort to attain national air quality standards has not been enough to protect public health. In fact, while we worried about the visible particulates, research has shown that it is actually the invisible, or fine, particulates that impact public health. Setting a goal to attain a regulatory standard may have unanticipated negative effects. For example, Louisville lost its vehicle emission-testing program when EPA certified that the community met the NAAQS for ozone. Last summer the city exceeded the 8-hour standard deemed to more accurately reflect health impacts 78 times.

Barnett noted that regulatory definitions are not static. Under the current federal administration we are seeing changes in the definitions of wetlands, navigable waterways, hazardous waste, etc. Meeting regulatory requirements can be an elusive process that may only be understood by regulators and regulatees. To the general public, whose support of DEP is essential, and who the plan acknowledges must take an active role to meet the goals, meeting regulatory requirements often has little meaning. If the Department wants the support of the general public the desired outcomes have to relate to those things that the public want and desire: clean air, clean water and public health protected.

- Reduce emissions or correct contaminated sites by an arbitrary amount

Mr. Barnett noted that the strategic plan sets as desired outcomes a reduction of air pollutants by 15-30% by 2010, improve visibility to background levels around Mammoth Cave by 2060, restore 80% of impaired streams, restore 25% of the sites with groundwater contamination by 2010, prevent any net loss of wetlands, manage 100% of sites with contaminated soil by 2010, eliminate 100% of open dumps, reduce roadside litter 50% by 2010, reduce the amount of solid waste disposed 20% and hazardous waste 10% by 2007, and assure that the net amount of pollutants is reduced by 2007. While all our desired outcomes, many of these goals are unrealistic and may have little or no bearing on the quality of our environment or public health impacts. The devil is in the details.

Some of the outcomes are so unrealistic that no rational person really expects the goal to be met. Experience at the national level with the passage of the Clean Water Act in 1972 to make all streams fishable and swimmable by 1983 and zero discharges by 1985, make these laudable goals questionable. The main question is do they adequately point out the road toward improvements? Creating unrealistic goals can reduce the level of support toward even laudable goals as deadlines are continuously extended.

Broad reduction goals can be met without having any significant impact on public health or the environment. As an example, in Jefferson County I have been involved in conducting air toxic monitoring over the past 4 years. Through that monitoring we have identified a handful of chemicals of concern from over 100 chemicals that we monitored and detected. If we look at total emissions, toluene is the single largest chemical being emitted and is in the highest concentration of any air toxic we measured. From a health perspective, we are still nowhere near being at a level that creates a public health concern. And yet due to its volume, the Air Pollution Control District has taken steps to force the reduction of this chemical and could easily reduce air toxic emissions by 20% focusing on this one chemical. On the other hand small amounts of Chromium VI, measured in the parts per billion, pose significant health risks. We could eliminate 100% of Chromium VI and see less no measurable reduction in air emissions but significantly reduce public health risks. Broad goals can cloak those actions that offer the greatest benefits. We need to identify set priorities based on risk reduction potential, not simply volumes.

The reduction goals need to recognize that the environment is dynamic. It is important to understand some of the forces being imposed, not by regulations, but by social, economic and natural forces and will impact goals to reduce pollutants. Kentucky is increasingly becoming urbanized, more than half of our citizens now live in metropolitan areas. This change will be accelerated with the loss of family farms as agricultural economics changes, as tobacco production drops, as Kentucky coal field production and employment drops, and as the quality of life in cities improve. To meet the goal will require alternative strategies to encourage private investment. These approaches will be impacted by broader economic conditions that are beyond the control of the Department or even the state.

Mr. Barnett noted that several of the desired outcomes are on target and set directions for the Department. Particularly those that deal with reduction of risks including:

- Prevention of air emissions that pose elevated public health risks.
- Prevention of health problems from public water supplies.
- Prevention of dam failures and losses from flooding.

The Department may want to go back to their 1997 Kentucky Outlook 2000: A Strategy for Kentucky's Third Century study that conducted a comparative risk analysis of environmental

issues facing the state. One of the weaknesses of the DEP Strategic Plan is that many of the issues deemed to pose the highest risks to public health and the environment are not addressed in the Strategic Plan, while others, which pose minor risk, are afforded equal attention.

Mr. Barnett noted that those outcomes that take a whole system approach are on target including:

- Acquiring natural areas
- Managing water supply resources using water budgets prepared for each major water basin

(3) What role do environmental indicators play in the Strategic Plan and do we have the right indicators?

Mr. Barnett noted that since 1992 the EQC has published a biennial “State of the Environment” report. The Commission in collaboration with the Department established environmental indicators to measure trends in the environmental quality of the state. Barnett noted that in his opinion, these reports have been invaluable. They are the only source of data for the public, legislators, educators, and state officials to get a snap shot of environmental quality and long-term trends within the state. I use the report in graduate classes and have used the reports constantly as reference material. I hope that the Commission continues publishing this document, over coming your budgetary limitations, to assist policy makers in making informed decisions on what directions Kentucky needs to take.

Kentucky’s environmental issues, predominantly a social issue, will take time to solve, according to Barnett. Some of the issues identified in the DEP Strategic Plan developed over a long period of time and will not be solved in 7, or 20 or 30 years. And they will be constantly evolving. Sometimes problems are addressed quicker when the magnitude of the threat is understood and the nature of the response is obvious. We have seen dramatic changes in this county since September 11. We are looking for massive changes in the economic sector to move more to an eco-economy. Shifting from a throwaway mentality to a closed loop mindset. From fossil fuel energy to hydrogen based energy sources. From short-term gains to long-term sustainability. We are looking for massive changes in the social sector. Where we live, what we consume, how we consume. And massive changes in the institutional sector, particularly government. From regulatory control to economic controls such as shifting taxes to environmentally destructive activities being implemented in Europe. The EQC through its State of the Environment reports can help guide these needed changes through information provided in its reports and recommendations.

(4) What recommendations do I have for EQC?

The indicators that EQC has tracked over the past year have provided a snap shot of where we have come. But EQC should begin focusing on the development of new indicators to measure our progress on where we want to go. Some suggestions are:

Long-term Sustainable Development

- Economic

- changes in economic activity and expansion of overall wealth,
- environmental infrastructure needs,
- energy efficiency and total consumption of energy per capita,
- consumption of raw material during the production of economic goods,
- water consumption to renewal rate
- timber harvest to growth ratio

- Environment

- decline/improvement in the overall health of ecosystems

- introduction of non-native species into an ecosystem
- habitat destruction or alteration
- greenhouse gas emissions
- ozone depleting emissions
- urban/suburban sprawl and the conversion of open space
- decline in the economic and social resource base for areas within the urban ecosystem
- total fossil fuel use (gas and coal)
- mineral reserves left in Kentucky
- changes in productive capacity of soil
- use of water resources in comparison to available resources
- Social
 - environmental literacy and adequate education of the concepts involved in sustainable development
 - Environmental justice, the fair and impartial access to clean air, water and soil regardless of economic or social status
 - Public health measures of respiratory illnesses, immune disorders, cognitive learning impairments, inflammation, birth defects, and cancer
 - percentage of people with access to health care
 - Demographics to understand impacts on the environment as the population of the state ages, shifts locations, changes in family size, and other factors

Measure Large Ecosystem Changes

For the most part the environmental indicators used by EQC have focused on emissions and discharges, administrative actions, and specific environmental issues. The challenge is to begin thinking about and measuring changes in larger ecosystems. The single largest impact on the environment is urbanization. And yet the Strategic Plan does not address this issue.

Understanding the magnitude and the impacts of this issue should be a priority of EQC. And finally environmental indicators should begin tracking the health of large ecosystems and biodiversity in the state. The Biodiversity Commission has already identified a number of potential indicators that could be adopted by the Commission.

Reestablishing Balance

Mr. Barnett suggested EQC identify and track Kentucky's use of environmental resources verses supply. A balance between carbon emissions and carbon fixation, water use and water resources, trees cut and trees replanted, habitat protected and habitat converted, raw material used and recycled material used, soil loss and soil regeneration, coal production and coal resources.

Understanding the demands on our resources would provide the best measure of our progress in environmental quality, and would help guide decision-makers on priorities and strategies to have Kentucky in balance with its natural resources.

Improved Public Health.

In the past two years two Schools of Public Health have been created at the University of Kentucky and Louisville. New capabilities are now available to assess health issues. The state has a Cancer and Birth Defects Registry. At the University of Louisville the head of Respiratory Pediatrics does not have to listen to Ozone Alerts from the Air Pollution Control District to know when ozone levels are high, he looks at how full the ward is at Kosair Children's Hospital. Epidemiologists are correlating pediatric cancers with radon levels. Pediatrics is measuring the incidences of asthma and the correlation between asthma and environmental pollutants. Researchers in the School of Education are correlating cognitive learning capabilities of children as young as 3 months to environmental stressors. Similar work is being conducted at UK. In 1988 the Department identified 3 areas of the state where environmental contaminants posed the

greatest risk to public health: West Louisville, Ashland, Calvert City. There is nothing that I know of that would change this conclusion. We have expended millions of dollars to study each of the areas. Risk management plans have been prepared for Ashland and Calvert City. The plans focused on regulatory controls, pollution prevention, and EPA Urban Air Toxic programs. Did they reduce health risks? In Louisville, the Risk Assessment will be released in the next couple of weeks. These three areas can be excellent indicators of public health risks from environmental pollutants. The EQC should focus on assessing health risks in their future State of the Environment reports.

Fostering the development of new methods of environmental measurement systems and assessment methods.

The EQC is already working with Murray State University on using amphibians as an indicator of environmental quality, and the University of Louisville in the use of hemoglobin adducts to measure exposure to air toxics. EQC in order to better measure environmental quality and to advise the Cabinet and Governor should be an active advocate for the development and utilization of these new methods.

In conclusion, the Environmental Quality Commission with its 10-years of publishing a state of the Environment Report has become a national leader in the use of environmental indicators. We know where we have been. I urge the Commission to focus also on where we need to go, and begin to track our progress toward reaching our goals.

• Robert Logan, Commissioner, Dept. of Environmental Protection

Mr. Logan stated that DEP's goals are to:

1. Develop a strategic plan that has meaningful outcomes.
2. Develop a data system that tells what is going on in the environment—set a baseline.
3. Obtain funding to move forward to a goal.

Mr. Logan said that environmental planning has been in the process for a number of years both at the state and federal government. He acknowledged that planning in DEP has been minimal. Mr. Logan firmly believes that environmental protection has moved forward. We can show a number of improvements. Mr. Logan also noted that development issues, state regulations and changes in technology and science have been moved us to more stringent environmental standards for the most part during the last 4 – 5 years.

Mr. Logan said the DEP Strategic Plan would establish the baseline from which to measure progress. He noted that after we see where we are, we can look at what we have accomplished and ask have we reduced the risk, are our programs making progress. The intent of the plan is to generate discussion and raise the level of awareness. Mr. Logan said the plan would not prioritize issues noting that human health is no more important than the health of an ecosystem. The plan rather will focus on sound facts, information and data, and build a case to get the funding to move forward.

Funding Issues

Mr. Logan first responded to Mr. Barnett's remarks regarding the need to address program-funding needs in the plan. Logan said there are numerous plans that local, state and federal bureaucracies have come up with. The question is what ever happens to them. Mr. Logan said in the past, these plans have failed because they have been linked to funding. He noted that when you develop a plan that includes priorities, staffing, and funding everything is lost except the dollars. The debate then tends to center on where do I get funding. Logan said DEP chose not to go that route with this plan and instead focus on needs and goals.

Plan Priorities and Issues

Mr. Logan also responded to Mr. Barnett's comments noting that the plan does not set priorities. He said DEP made a specific effort to develop a plan with objectives that DEP could accomplish. He noted that the environmental programs in this nation and in the states have been haphazardly developed over the years. There is no long-term strategy on how you deal with protecting the environment and reducing public health threats. Therefore, it was the intent of DEP to look at all the issues rather than set priorities. Logan noted that when it comes down to the final evaluation DEP would determine what the priorities and funding needs are.

Mr. Logan noted that DEP has been remiss in clearly articulating its focus and direction to the public, to the administration, to legislature and to its own staff. He said that Mr. Barnett gave a very fair set of comments in his evaluation of the plan and raised some important points. For example, do you focus on broad goals or more specific goals? He said the state also has to establish whether the goals in the plan are important. While public health risk is important DEP also believes that aesthetics, such as open dumping, are important too-- they may not be as great a public health risk associated with open dumps but it may have a significant impact on how the state is viewed by tourists.

Mr. Logan said he believes the plan is already a success given the considerable comments given at the EQC meeting. The position of DEP is that the environment should be in everybody's interest and be everybody's business. What DEP has attempted to do in the plan is establish a baseline to determine if the programs have made a difference. However, the results will all depend on where you set the performance standard. The real question should be whether we have reduced the risk and improved the environment. The plan is now open to the public for comment. Mr. Logan stated that DEP has attempted to lay out a road map of what it thinks is important to generate discussion and raise the level of awareness.

Logan also noted that funding for DEP has been reduced over a number of years. And this begs the question, why is that? Is it because the environment is so much better that we don't need it? The question is: do we know less about what we are doing because the very core of the monitoring programs that determine what we need to know about the environment have been reduced. The plan lays out what the issues are and how we are going to move forward.

Throughout this effort we now know we need:

- factual information to establish a baseline.
- evaluate the data we have.
- Better understand what that data means and what that represents not only to the human health but to the ecological health in this state and you can't have one without the other

The DEP has been disorganized and unfocused in the past and the plan lays out some objectives that will focus the agency and move it forward to where we think we need to go.

Environmental Indicators

Mr. Logan noted that the EQC State of Environment reports were important in the development of the plan and DEP indicators. He indicated, however, that DEP should have done this monitoring and evaluation as well. As the DEP moves forward in developing and monitoring environmental conditions through the use of its indicators, Logan urged EQC to still assess environmental quality as an independent evaluator.

Plan Overview

Aaron Keatley with the DEP Commissioner's office provided a general overview of the plan. The plan will:

- Focus on the environment. In the past, plans were focused on programs. To focus on the environment we see what needs to change in the environment.
- Collect data to determine the quality of the environment. DEP does a good job collecting information and monitoring, coordinating efforts and partnering with other agencies. But there are still things about the environment we do not know.
- Document a consistent business philosophy. DEP has many divisions and each division has multiple programs and all have evolved in different ways over time. We want to document, "This is what this agency stands for; this is how we consider issues, this is how we are going to use science and other bits of information as we manage our resources."
- Set (DEP) department-level goals and priorities. To change DEP's previous focus on programs, the agency will look at what cooperatively we need to do. DEP will also look at secondary impacts such as how waste issues affect air quality and how air quality can affect water quality.
- Establish a process that promotes efficient and effective use of DEP's resources. The plan is designed to focus on the result we want to achieve then evaluate whether the processes designed to achieve that result are actually being successful.
- Promote a public dialogue on environmental issues and priorities. The agency took a leadership role to identify those things we need to do. It is now open for comment and input from the general public, EQC, EPA, legislative bodies—all to whom we are accountable.

Keatley stated that DEP would issue a statement of measurements and produce an annual report showing the progress being made on each outcome. DEP will revisit the management plan to determine if any outcomes need to be changed based on new data, public input, or new state policy.

Question and Answer

Vision Statement

Aloma Dew commented that the vision statement says . . . "enjoy an environment as good or better than the present." Would it have been best to say, enjoy an environment better than the present? Mr. Logan responded that some of the areas in Kentucky are in excellent condition. That does not mean that they are not under stress or future stress. The difficulty is establishing a baseline. Logan noted that we talk about environmental quality but we have to define what that means -- where was it when we began or before we did certain land use activities and how do we know that we have degraded or improved it.

Public Input

Gordon Garner commended DEP for making the effort. He said that EQC hoped such an initiative to link actions with outcomes would be made by DEP when the EQC did its first State of Kentucky's Environment report and when EQC worked on the Risk Assessment Report. As the process evolves, Mr. Garner urged the Cabinet to look at ways the EQC can help bring the public into the dialogue.

Audience member Wade Helm asked if the cabinet would share the plan with other cabinets in state government – especially Surface Mining and Transportation.

Mr. Logan said yes, that DEP has already shared the plan with other NREPC departments and it is being used somewhat of a template for the Cabinet strategic planning process that is required

by the Governor's office. As for others state agencies, we have it on the web and have submitted it to the Governor's Office.

Institutionalize Plan

Leslie Cole asked that with the upcoming change in the administration, how did DEP propose to institutionalize the plan in the department and the Cabinet? How will it continue forward?

Bob Logan responded that DEP would institutionalize the plan in a couple of ways. Job descriptions will contain components with a certain percentage of time to be involved in implementing the strategic plan and it is also included into the budget document. With the change in administration, Mr. Logan indicated that he hoped that the logic and the merit of the plan would help it to proceed forward.

Document Ecological Health

Audience member Dr. Bill Martin commented that we do not have documentation of Kentucky's non-human life -- wildlife, plants, forest, fields -- and encouraged the EQC to focus on documenting the ecological health of Kentucky. Mr. Gordon asked if there was a state that has a model for measurement? Dr. Martin responded that Ohio, Illinois, and California are good examples.

Ms. Dew thanked Mr. Logan and Mr. Barnett for their comments and noted that DEP should be commended for its efforts.

BUDGET CUTS AND IMPACTS ON ENVIRONMENTAL PROGRAMS

Ms. Dew moved on to the next agenda item -- a discussion of the recent budget cuts in the Natural Resources and Environmental Protection Cabinet.

• Hank List, Secretary, Natural Resources and Environmental Protection Cabinet (NREPC)

Overview of Budget

NREPC Secretary List, accompanied by Roger McCann, Budget Director, began by passing out an overview of the Cabinet's budget. A copy of the budget overview handout is attached and made a part of these minutes. Mr. List noted that NREPC Fiscal Year 2004 budget of \$155.47 million has been allocated in a manner to meet the requirements of the Cabinet as a whole. Cap positions in the Cabinet are 1,610. Mr. List indicated that HB 269, the budget bill, allows the Cabinet to divert monies where needed in order to make up for shortfalls. Mr. List noted that a good example of this is the funding for the EQC in FY 2004. The legislature did not provide funding for EQC. However, the cabinet has moved \$223,000 into the EQC budget for the fiscal year 2004.

Budget Issues - Staffing

Secretary List indicated that the budget has taken up a lot of his time during the past 5 months. List said that his priority concerning the budget has been to ensure that staff and positions are retained in NREPC because:

- 1) It is what they deserve, and
- 2) It is an extremely difficult Cabinet to hire qualified workers and retain them. Most of the activities involved with NREPC are technical degrees or technically-oriented. The cabinet has to recruit employees to fill positions that are so necessary to get the job done. However, the cabinet has had difficulty attracting enough engineers, biologists, geologists and archaeologists at what we can pay them.

Secretary List noted that the Governor has ordered a 1,000 statewide employee reduction in the administration. The cabinet will be required to reduce its workforce by 42 full-time filled positions. At the same time, the cabinet is trying to hire people so desperately needed to meet state and federal mandates. The Cabinet does not have unnecessary management positions or unclassified employee positions that it can tap to meet these employee reduction requirements. The people in place for the most part are needed to get the work done.

Cost Cutting Initiatives

The Cabinet has initiated several measures to reduce costs where possible including reducing out-of-state travel, cutting down on printing expenses, reducing equipment expenses, turning in unused vehicles and closely tracking vehicle expenses. Many of these measures were put in place under Secretary Bickford and have led to good results.

Program Impacts

Secretary List noted that the NREPC has seen its fair share of budget cuts. While List did not know if the NREPC was one of the hardest cabinets hit with budget cut, he did believe it was near the top. He noted that between fiscal years 2001-2002 and 2002-2003 the general fund of the cabinet would have been cut by 11.8 percent. List noted that is a pretty substantial amount of money. He said the only source of these cuts is found in the jobs the cabinet has such a hard time filling. The cabinet typically has several vacancies because of the nature of the types of jobs. Unfortunately, when those positions are not filled they are targeted for reduction. However, List noted that he does not intend to cut back programs, although implementation of new or expanded programs is questionable.

List indicated that the Cabinet has only a 1 percent margin to absorb any unexpected expenses. If the state has a serious environmental emergency, NREPC will have difficulty finding money to apply to that. Mr. List said that doesn't mean the cabinet cannot get emergency funds from the Governor's Office or other sources, but the point is the cabinet cannot financially absorb anything in addition to its existing programs. List said that with many NREPC employees now retiring the payout on retirement benefits could very well tap the cabinet's 1 percent margin over what is committed to be expended at this point in time.

Transition to New Administration

Secretary List noted that during the next 7 months he would work to institutionalize and prepare for transition to the next administration as best he could. The cabinet is working to put itself in the best position by the end of the year. The intent is to emphasize the cabinet's philosophy and initiatives clearly and concisely, with enough momentum hopefully to carry them forward. Mr. List said he would like to have in place an atmosphere that the Cabinet is working well, is focused and has direction and managers and employees should be retained and kept in place.

Priority Issue: Environmental Education

List said that one of his priorities before he leaves the cabinet is to strengthen the environmental education programs. He noted that there are a number of environmental education programs across the state, mentioning several university programs. But very few are coordinated. List said he would attempt to put in place a more coordinated environmental education effort to ensure people are better qualified to go into a classroom with the knowledge of how to present environmental subjects. He hopes to hire an environmental education coordinator in the NREPC Secretary's office.

Questions and Answers

Chair Dew asked if the Cabinet would be able to maintain an adequate level of inspectors in the field. Secretary List said that there have been no cuts in field inspectors.

Ms. Dew thanked Secretary List for attending. She commented that EQC is concerned about the budget and the state's ability to adequately protect the environment. She and other commissioners noted that the cabinet might be forced to look for additional resources through raising permits fees and other fees.

REGULATION REVIEW

EQC moved on to its next agenda item – review of proposed regulations.

Air Quality Regulations

Ms. Lona Brewer with the Division for Air Quality reviewed 4 proposed amendments.

401 KAR 57:002, 40 C.F.R Part 61 national emission standards for hazardous air pollutants.

401 KAR 60:005, 40 C.F.R Part 60 standards of performance for new stationary sources.

401 KAR 63:002, 40 C.F.R Part 63 national emission standards for hazardous air pollutants.

401 KAR 52:080. Regulatory limit on potential to emit.

With no questions, a motion was made by Gordon Garner and seconded by Lindell Ormsbee to approve KAR 52:080. The motion passed unanimously. A motion was made by Betsy Bennett and seconded by Gordon Garner to approve the 401 KAR 57:002; 401 KAR 60:005; and 401 KAR 63:002 regulations. The motion passed unanimously on a voice vote.

Waste Management Regulations

Mr. Rob Daniel, Director with the Division of Waste Management accompanied by Steve Kent, Supervisor reviewed on proposed amendment:

401 KAR 42:005.

The regulation changes the definition of cathodic testers to match the federal definition in 40 CFR 280.12 to alleviate a shortage of qualified testers.

EQC Commissioner Betsy Bennett asked if the regulation changed the division's ability to enforce? Mr. Daniell responded it did not as the division cannot regulate by guidance. It is a recommendation on how the test can be performed.

Commissioner Lindell Ormsbee asked if the division has to certify people that are doing the tests? Mr. Daniell responded that the division would look at the qualifications on a case-by-case basis.

A motion was made by Betsy Bennett and seconded by Gordon Garner to approve the 401 KAR 42:005. The motion passed unanimously on a voice vote.

Surface Mining

Mr. Jim Villines, Carl Campbell, and Roy McQueary, DSMRE next reviewed proposed noncoal regulations:

405KAR 5:001 405KAR 5:053

405KAR 5:030 405KAR 5:060

405KAR 5:035 405KAR 5:075

405KAR 5:045 405KAR 5:080

Highlights of the regulatory package are:

- Safety barriers to protect against various injury or death from falling from dangerous highwalls and fences along the boundary of the site.
- Operations other than limestone and gravel mines must eliminate highwalls and backfill and grade disturbances to AOC (approximate original contour) and limestone mines must reduce the height of their highwall to the extent technically feasible, backfilling with spoil.
- Mine spoil must be placed back in the mine pit as much as possible and spoil left outside must be placed on relatively flat and stable areas.
- Operators are required to replace damaged water supplies and structures using the same type of procedure we have in place for coal mining.
- Operations that use explosives must offer pre-blasting surveys to nearby residences and must provide public notice on blasting schedules.
- New and amended permits must provide significantly increased reclamation bonds.
- Applications for new permits must include a transportation plan for hauling non-coal minerals from the site across public roads.

Questions and Answers

EQC Commission Lindell Ormsbee expressed concern for a provision that allows noncoal mining in federal and state environmentally sensitive areas. He asked there are any proposals to mine on state or federal lands? Mr. Villines responded no, that he was not aware of any specific proposals at this time.

Commissioner Aloma Dew indicated that the current noncoal regulations prohibit mining on state and federal public lands. But the proposed regulations allow mining in “wildlife management areas, wild rivers within 100 miles of intermittent or perennial streams.” She asked what the reason was for the change. Mr. Villines responded that was recognition of property rights. The change simply says that if it is okay with the federal agency to allow a noncoal operation on federal land and if the law allows it, then we may approve it.

Commissioner Dew indicated that she had some real problems with allowing noncoal mining on federal and state public lands. She asked what recourse the public would have if such a proposal was made? Mr. Villines responded that the recourse would be to participate in the permitting decision as to whether or not DSMRE should approve it.

Commissioner Dew asked for clarification regarding permit conferences and public notices. Mr. Villines said this was a procedural change. There was a problem in the existing regulation that required DSMRE to respond to public comments and have a hearing even before it had the application in hand long enough to look at it and to begin to deal with it. Roy McQueary, manager of the noncoal section in the Department of Surface Mining, indicated that citizens were requesting to see the application and we didn’t actually have it. It doesn’t cut the public out of any time or any opportunity to comment. In fact it makes it work better.

EQC director Leslie Cole asked Mr. Villines to clarify Ms. Dew’s concern regarding mining on public lands. She said it is EQC’s understanding that the existing regulations prohibit mining in environmentally sensitive or lands such as National Parks and wildlife management areas. Ms. Cole asked if there had been any legal challenges regarding takings on these lands in Kentucky in regard to noncoal mining. Mr. Villines responded that he was not aware of any challenges or of any applications that have threatened those areas. Mr. Villines stated that the change is a

reflection of the real world and legal environment that we are in. He said if we get an application to mine on lands owned by the federal government and the federal government is perfectly willing to allow the operation of a mine and we prohibit it then we are at great risk of takings.

Ms. Cole asked if noncoal permitting on federal lands would be under the authority of BLM. Mr. Villines said there is nothing that he could remember that specifically exempts land that is in federal ownership and control from these permitting requirements. Mr. Ormsbee noted that EQC is having trouble imagining any circumstance that would allow noncoal mining on environmentally sensitive or recreation areas to be beneficial to the Commonwealth. Mr. Villines said it was an honest attempt to recognize that there are takings and property rights concerns.

Commissioner Gordon Garner asked if the regulations apply to soil mining or sand and gravel mining from rivers. Mr. Roy McQueary responded that it only applies to sand and gravel surface mining operations, not riverbed mining. Mr. Garner noted that this issue came up at the Ohio River ORSANCO meeting recently. Mr. Carl Campbell, Commissioner of the Department of Surface Mining, indicated that the Corps of Engineers would regulate dredging because it is navigable waters of the U.S. Mr. Garner noted that if they were filling a waterway it is regulated by the Corps but if they are taking or mining soil from a river they are not regulated under the Corps program.

Mr. Garner asked about whether borrow pits for the Department of Transportation would be regulated. Roy McQueary said that borrow areas for Transportation purposes are usually regulated by the Transportation Department.

Mr. Garner noted that he was uncomfortable about the provision allowing noncoal mining in environmentally sensitive areas. He indicated that he had not been convinced that the current restriction should be changed.

Gordon Garner made the motion and it was seconded by Gary Revlett to approve the noncoal regulations:

405KAR 5:001 405KAR 5:053 405KAR 5:030 405KAR 5:060

405KAR 5:035 405KAR 5:075 405KAR 5:080

with the exception of 405 KAR 5:045 and the provision regarding noncoal mining in environmentally sensitive and recreational areas. EQC expressed grave concern about the proposed requirements to allow noncoal mining in federal and state environmental areas and recreational areas such as national parks, wildlife management areas, wild rivers, nature preserves and similar public lands. The Commission requested that the original language that prohibits mining in these areas be retained given that there has been no history of legal or property right challenges to this regulation, which was given as the basis for the change. The motion passed unanimously by a voice vote.

OTHER BUSINESS

Budget

EQC Director Cole briefed Commissioners on the commission's budget. The NREPC has agreed to provide temporary funding to EQC for fiscal year 2004 (July 1, 2003 through June 30, 2004) per the request of the Governor. NREPC, however, is funding only three of the four EQC fulltime positions. Lola Lyle's Principal Assistant position, as were all Principal Assistant positions, will be abolished per action of the 2003 legislative session. NREPC Secretary List is working to find a position for Lola in the NREPC.

Next EQC Meeting – June 16-17

A meeting has been tentatively planned for June 16-17 to review and tour the Martin County Coal slurry impoundment and impacted area. EQC is working with Carl Campbell on setting up the tour. EQC will also invite the U.S. EPA to give a status report of the restoration plan and will also request a status report on coal impoundments in Kentucky from federal and state officials.

Daniel Boone National Forests

Director Cole said that an EQC letter was sent to the Governor requesting his support for acquisition funding for the Daniel Boone National Forests. The Governor has since sent letters to the Kentucky Congressional Delegation supporting the EQC request.

Appalachian Regional Commission

Director Cole said that EQC sent letters to the Kentucky Congressional Delegation for support for the Appalachian Regional Commission (ARC). EQC received a letter of support from Rep. Ken Lucas and a letter of appreciation from Ewell H. Balltrip, Executive Director, Kentucky Appalachian Commission.

EQC Meeting with South Africa Delegation

EQC Betsy Bennett, Gordon Garner and Lola Lyle met with a delegation of teachers from South Africa to discuss water quality issues at the delegation's request. Gordon Garner gave a brief overview of the meeting.

EQC Pine Mountain Nature Tourism Initiative

Director Cole gave an update of the nature tourism initiative that EQC began last fall to promote nature tourism in the Pine Mountain region. EQC has prepared a whitepaper based on the findings of the roundtable the commission held in Oct. 2002 and presented it to Secretary Ann Latta, Secretary Hank List, and the Secretary of the Executive Cabinet Ed Ford. Secretary Latta is meeting tomorrow with Tourism officials for more input. EQC hopes to present the project findings to the Governor in the next month.

Children's Environmental Health Network Partnership

Director Cole recently met with the Children's Environmental Health Network. The group has agreed to partner with EQC to hold an environmental health forum in Louisville in October 2003. (October is Children's Environmental Health month.)

EQC Newsletter

To control the cost of mailing the newsletter, EQC is in transition from 'snail mail' to e-mail. At this time, the database has more than 500 e-mail addresses and new requests for conversions come in almost daily.

State of the Environment Report

A general discussion of the EQC State of the Environment report and indicators focused on the commission moving from just measuring environmental quality to actually setting expectations. Director Cole said she was pleased the DEP has chosen to integrate many of the EQC indicators into its budget and decision making process. Ms. Cole reported that staff is working on the next set of indicators and hopes to put the report out chapter by chapter beginning this summer on the EQC Web site.

EQC 2003 Tentative Schedule of meetings

- May 13 -- The Youth Environmental Summit (EQC is co-sponsor)

- June 16-17 – Martin County Coal Slurry Spill – Jenny Wiley State Park – evening forum and tour
- June 30 -- Pine Mountain Settlement School dedication of the James Bickford Nature Preserve. Two hundred acres was donated for the purpose.
- July -- Meeting with the Department of Agriculture concerning pesticide spraying for mosquitoes and other environmental issues.
- August – Meeting at Eastern Kentucky University on sustainable forestry.
- October – Louisville environmental health forum.
- December—Annual work session to set the 2004 agenda.

Oil and Gas Gathering Lines Recommendation

Betsy Bennett made a motion that EQC write a letter of support to the Governor to adopt emergency regulations on siting gathering lines and to expedite development of other regulations to protect landowners and conduct a full review of oil and gas regulatory programs. Patty Wallace seconded and the motion passed unanimously by voice vote.

EQC Guest Book

Director Cole noted that the Environmental Quality Commission has created a Guest Book on its Web site to let people express support for the EQC. Support emails are coming into the guest book and will be posted on our Web site.

Adjourn

Gordon Garner moved the meeting be adjourned. Lindell seconded followed by a unanimous voice vote. The meeting adjourned at 4:40 p.m.

Signed _____



Date June 16, 2003

NREPC BUDGET FY 04 REVISED		FY 04 INCOME				CAP POSITIONS	
HB 269/EN with VETO		F			J	BB	
NREPC AGENCIES	NEW FY04 GF	FY 04 Tobacco FUNDS	FY 04 RF TOTAL	FY 04 FF TOTAL	FY 04 TOTAL FUNDS	FY 04 FUNDED POSITIONS	
GAS							
Office of the Secretary	1,557,300		-	-	1,557,300	15	
Inspector General	615,800		2,000	4,300	622,100	12	
Administrative Services	1,999,500		-	-	1,999,500	36	
Hearings	470,200		19,800	293,300	783,300	10	
Legal Services	3,352,300		194,800	1,272,600	4,819,700	65	
Information Services	1,561,300		60,700	41,200	1,663,200	22	
Total GAS	9,556,400	0	277,300	1,611,400	11,445,100	160	
NREPC BUDGET FY 04 REVISED							
HB 269/EN with VETO							
NREPC AGENCIES	NEW FY04 GF	FY 04 Tobacco FUNDS	FY 04 RF TOTAL	FY 04 FF TOTAL	FY 04 TOTAL FUNDS	FY 04 FUNDED POSITIONS	
DEP							
Commissioner's Office	1,774,100		149,900	-	1,924,000	27	
Water	10,223,200		2,288,900	12,611,900	25,124,000	287	
Air Quality	1,437,100		9,674,000	1,745,300	12,856,400	177	
Waste Management	5,346,000		21,780,000	5,015,500	32,141,500	228	
Maxey Flats	483,300		-	-	483,300	6	
Environmental Services	3,485,800		588,900	289,200	4,363,900	47	
Total DEP	22,749,500	0	34,481,700	19,661,900	76,893,100	772	
NREPC BUDGET FY 04 REVISED							
HB 269/EN with VETO							
NREPC AGENCIES	NEW FY04 GF	FY 04 Tobacco FUNDS	FY 04 RF TOTAL	FY 04 FF TOTAL	FY 04 TOTAL FUNDS	FY 04 FUNDED POSITIONS	
DNR							
Commissioner's Office	449,600		111,500	-	561,100	6	
Forestry	10,291,500		1,421,800	1,700,800	13,414,100	231	
Conservation	2,426,100	9,000,000	2,132,200	831,100	14,389,400	26	
Energy	181,300		429,300	2,382,800	2,993,400	10	
Total DNR	13,348,500	9,000,000	4,094,800	4,914,700	31,358,000	273	
NREPC BUDGET FY 04 REVISED							
HB 269/EN with VETO							
NREPC AGENCIES	NEW FY04 GF	FY 04 Tobacco FUNDS	FY 04 RF TOTAL	FY 04 FF TOTAL	FY 04 TOTAL FUNDS	FY 04 FUNDED POSITIONS	
DSMRE							
Commissioner's Office	1,069,300		1,321,700	-	2,391,000	31	
Permits	3,318,700		393,300	4,553,600	8,265,600	83	
Field Services	6,180,700		803,400	6,573,500	13,557,600	188	
Abandoned Lands	-		3,965,700	6,000,200	9,965,900	78	
Total DSMRE	10,568,700	0	6,484,100	17,127,300	34,180,100	380	
NREPC BUDGET FY 04 REVISED							
HB 269/EN with VETO							
NREPC AGENCIES	NEW FY04 GF	FY 04 Tobacco FUNDS	FY 04 RF* TOTAL	FY 04 FF TOTAL	FY 04 TOTAL FUNDS	FY 04 FUNDED POSITIONS	
EQC KSNPC							
	-	-	223,300	-	223,300	3	
	1,053,100		298,700	25,000	1,376,800	22	
Total NREPC	57,276,200	9,000,000	45,859,900	43,340,300	155,476,400	1,610	

* will need appropriation increase